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third party, such injured party may recover damages from city and city may recover such damages from negligent third party in tort. *Washington Gas Co. v. District of Columbia*, 161 U. S. 316; *Bennet v. Fifield*, 13 R. I. 139. It is beyond question that there are some circumstances where a party may sue another in an action *ex contractu*, or *ex delicto* at his option. *I Addison, Torts*, 27. There are apparently no cases, where an action has been brought in tort where there was an existing contract between the parties made with the intent that such contract should alone govern the right of action. But where there is a tort liability and an express contract is made regulating such liability for certain contingency, if such contract can be construed to show that the intention of the parties was to substitute the contract for the liability in tort it would seem only just that the action should be *ex contractu* and not *ex delicto*. And the bond in the present case was obviously so construed.

WATER AND WATER COURSES—DAMS—DEFLECTION OF CURRENT.—INHABITANTS OF DURHAM v. LISBON FALLS FIBRE CO., 61 ATL., 177 (ME.).—Where by reason of a lawful erection of a dam in a proper and reasonable manner the current of a non-navigable river has been deflected towards the shore thereby causing injury to a highway along the bank of such river, *held*, that such damage is *damnum absque injuria*.

The state is invested with the right of enacting such laws as give authority to improve the navigation and thus promote the interests of the public even although it may be an inconvenience to a private individual; such inconvenience being *damnum absque injuria*. *Angell on the Law of Waters*, 93; *Hollister v. Union Co.*, 9 Conn. 436. The present case applies this principle to the improvement of inland waters. But the courts are not unanimous in so considering the matter. Thus it has been held that a person injured by the erection of a milldam without his consent may recover damages therefor notwithstanding that the dam was duly authorized by law. *Cain v. Hays*, 4 Dam (Ky.) 338. Also the privilege of erecting a dam over a watercourse is against common right, and to uphold the grant of such a privilege the record must affirmatively show a compliance with all the requisites of the statute. *Martin v. Rushton*, 42 Ala. 289.

WILLS—ATTESTATION—SUFFICIENCY.—CALKINS v. CALKINS, 75 N. E. 182 (ILL.).—Where a statute requires wills to be attested in the presence of the testator, *held*, not to be a sufficient compliance where witnesses withdrew to another room beyond the vision of the testator and there signed their names.

The phrase "in the presence of the testator" has often been the subject of judicial investigation and construction. Such presence may be actual or constructive. Under the English statute of Frauds, requiring attesting witnesses to sign as above, constructive presence has been held sufficient. *Casson v. Dode*, 1 Brown, C. C. 98. Courts will lean in support of a fair will and not defeat it for a slip in form when the meaning has been complied with. *Right v. Price*, 1 Doug. 243. The tendency of courts of this country has been in favor of the English construction. That where the attestation was in an adjoining room but within the vision of the testator, it was in his presence, see *Baldwin v. Baldwin, Exr.*, 81 Va. 405. *Riggs v. Riggs*, 135 Mass. 238. But when in an adjoining room out of the testator's sight, the door between being open, the contrary has been held in accord with the present case. *Mandeville v. Parker*, 31 N. J. Eq. 242. So also, where in the same room but out of the testator's sight by reason of some intervening object. *Brooks v. Duffield*, 25 Ga. 441.